

## Part III – Administrative, Procedural and Miscellaneous

### **2010 Cumulative List of Changes in Plan Qualification Requirements**

Notice 2010-90

#### **I. PURPOSE**

This notice contains the 2010 Cumulative List of Changes in Plan Qualification Requirements (2010 Cumulative List) described in section 4 of Rev. Proc. 2007-44, 2007-2 C.B. 54. The 2010 Cumulative List is to be used by plan sponsors and practitioners submitting determination, opinion, or advisory letter applications for plans during the period beginning February 1, 2011 and ending January 31, 2012. These plans will primarily be (1) single employer individually designed defined contribution plans, including employee stock ownership plans (ESOPs), and single employer individually designed defined benefit plans that are in Cycle A and (2) defined contribution pre-approved plans (that is, defined contribution plans that are master and prototype (M&P) or volume submitter (VS) plans) for the second submission under the remedial amendment cycle under Rev. Proc. 2007-44. Generally, an individually designed plan is in Cycle A if the last digit of the employer identification number of the plan sponsor is 1 or 6.

The list of changes in section IV of this notice does not extend the deadline by which a plan must be amended to comply with any statutory, regulatory, or guidance changes. The general deadline for timely adoption of an interim or discretionary amendment can be found in section 5.05 of Rev. Proc. 2007-44.

#### **II. BACKGROUND**

Rev. Proc. 2007-44 sets forth procedures for issuing opinion, advisory, and determination letters and describes the five-year remedial amendment cycle for individually designed plans and the six-year remedial amendment cycle for pre-approved plans. In addition, section 5.05 of Rev. Proc. 2007-44 provides the deadline for timely adoption of an interim amendment or discretionary amendment.

Under section 4 of Rev. Proc. 2007-44, the Internal Revenue Service announces its intention to annually publish a Cumulative List to identify statutory, regulatory, and guidance changes that must be taken into account in submissions by plan sponsors to the Service for opinion, advisory, and determination letters whose submission period begins on February 1st following issuance of the Cumulative List.

In Notice 2009-98, 2009-2 C.B. 974, the Service published the 2009 Cumulative List of Changes in Plan Qualification Requirements (2009 Cumulative List).<sup>1</sup>

### III. APPLICATION OF 2010 CUMULATIVE LIST

This notice is being issued in conjunction with the determination letter program for individually designed plans eligible for Cycle A and the opinion and advisory letter programs for M&P and VS defined contribution pre-approved plans. In accordance with Rev. Proc. 2007-44, the Service will start accepting determination letter applications for Cycle A individually designed plans beginning on February 1, 2011. The 12-month submission period for Cycle A plans will end January 31, 2012. In addition, the Service will start accepting opinion and advisory letter applications for defined contribution pre-approved plans beginning on February 1, 2011. The 12-month submission period for non-mass submitter sponsors and practitioners, word-for-word identical adopters, and M&P minor modifier placeholder applications will end January 31, 2012. The 9-month submission period for mass submitters and national sponsors will end October 31, 2011, as provided in section 18.02(1) of Rev. Proc. 2007-44.

The 2010 Cumulative List, set forth in section IV of this notice, informs plan sponsors of issues the Service has specifically identified for review in determining whether a plan filing in Cycle A has been properly updated. Specifically, the 2010 Cumulative List reflects law changes under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Pub. L. 107-16 (with technical corrections made by the Job Creation and Worker Assistance Act of 2002 (JCWAA), Pub. L. 107-147), the Pension Funding Equity Act of 2004 (PFEA), Pub. L. 108-218, the Pension Protection Act of 2006 (PPA '06), Pub. L. 109-280, the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Pub. L. 110-28, the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act), Pub. L. 110-245, the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA), Pub. L. 110-458, and the Small Business Jobs Act of 2010 (SBJA), Pub. L. 111-240.

The HEART Act provisions formerly appeared separately from the Cumulative List of Changes in Plan Qualification Requirements section of the 2008 and 2009 Cumulative Lists. The HEART Act provisions are now included in the Cumulative List of Changes in Plan Qualification Requirements (which is section IV of this notice) and are identified as "New."

Section 201 of WRERA formerly appeared separately from the Cumulative List of Changes in Plan Qualification Requirements section of the 2009 Cumulative List. Section 201 is now included in the Cumulative List of Changes in Plan

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<sup>1</sup> See Notice 2008-108, 2008-2 C.B. 1275; Notice 2007-94, 2007-2 C.B. 1179; Notice 2007-3, 2007-1 C.B. 255; Notice 2005-101, 2005-2 C.B. 1219, for the 2008, 2007, 2006, and 2005 Cumulative Lists, respectively.

Qualification Requirements (which is section IV of this notice) and is identified as “New.”

If a plan, submitted between February 1, 2011 and January 31, 2012, is amended to reflect section 201 of WREDA, the Service will consider section 201 in issuing the determination letter, opinion, or advisory letter. If a noncalendar year plan, which does not have to adopt the WREDA section 201 amendment until after January 31, 2012, is submitted between February 1, 2011 and January 31, 2012 without being amended for section 201, then the Service will consider section 201, if applicable, during the next Cycle A or 6-year remedial amendment cycle submission period.

The Service will no longer include hurricane or disaster relief provisions, which formerly appeared in the Cumulative List of Changes in Plan Qualification Requirements. Although no longer listed in this notice, hurricane and other disaster relief provisions continue to apply, if applicable, to individual plans. For information regarding tax relief provisions for taxpayers affected by disaster relief situations go to <http://www.irs.gov/newsroom/article/0,,id=108362,00.html>.

Except as provided below, the Service will not consider in its review of any determination, opinion, or advisory letter application, for the submission period that begins February 1, 2011, any:

- (1) guidance issued after October 1, 2010;
- (2) statutes enacted after October 1, 2010;
- (3) qualification requirements first effective in 2012 or later; or
- (4) statutory provisions that are first effective in 2011, for which there is no guidance identified in this notice.<sup>2</sup>

However, in order to be qualified, a plan must comply with all relevant qualification requirements, not just those on the 2010 Cumulative List.

The 2010 Cumulative List includes the following guidance issued after October 1, 2010:

- Notice 2010-84, 2010-51 I.R.B. December 20, 2010 (item 14 in section IV of this notice). The Service will consider Notice 2010-84 in issuing an

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<sup>2</sup> The Service will also not consider the requirements of § 436 or the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, Pub. L. 111-192, in its review of any determination, opinion, or advisory letter application submitted during the period beginning February 1, 2011 and ending January 31, 2012. See Notice 2010-77, 2010-51 I.R.B. December 20, 2010, which extends the deadline for amending single-employer defined benefit plans to meet the requirements of §§ 401(a)(29) and 436 to the last day of the first plan year that begins on or after January 1, 2011.

opinion, advisory, or determination letter in the case of a plan submitted between February 1, 2011 and January 31, 2012, if the plan has been amended to reflect section 2112 of SBJA, regarding in-plan Roth rollovers.

- Final regulations under § 411(a)(13) and § 411(b)(5) (75 Fed. Reg. 64123) (items 20 and 22 in section IV of this notice). The Service will consider the final regulations under § 411(a)(13) and § 411(b)(5) in issuing a determination letter in the case of an applicable defined benefit plan (within the meaning of § 411(a)(13)(C)) submitted between February 1, 2011 and January 31, 2012.
- Notice 2010-77, 2010-51 I.R.B. December 20, 2010, extends the deadline for amending cash balance and other applicable defined benefit plans, within the meaning of § 411(a)(13)(C), to meet the requirements of § 411(a)(13) (other than § 411(a)(13)(A)) and § 411(b)(5) to the last day of the first plan year that begins on or after January 1, 2011. As provided in Notice 2010-77, the filing of a determination letter application in the Cycle A submission period may accelerate that deadline.

The Service will not consider § 414(x) (item 30 in section IV of this notice) in issuing opinion and advisory letters for pre-approved plans at this time.

With respect to matters addressed by proposed regulations identified in the footnotes of section IV of this notice, the Service's review of the plan will be based on a reasonable interpretation of the statute, existing final regulations, or other published guidance. For this purpose, compliance with proposed regulations will be treated as meeting that standard. However, a determination, opinion, or advisory letter cannot be relied on with respect to whether the plan complies with the proposed regulations.

Terminating plans must include all law changes in effect at the time of termination. See section 8 of Rev. Proc. 2007-44 regarding plan termination.

#### **IV. 2010 CUMULATIVE LIST OF CHANGES IN PLAN QUALIFICATION REQUIREMENTS**

The following list consists of statutory provisions and associated guidance which reflect changes to plan qualification requirements. Miscellaneous guidance is also provided. The Service has identified below plan qualification requirements which were not on the 2009 or earlier Cumulative Lists as "(New)."

All items from the 2004 Cumulative List have been deleted from the 2010 Cumulative List. In addition, items from the 2005 Cumulative List that apply solely to defined benefit plans or ESOPs have been deleted from the 2010 Cumulative List. Thus, the 2010 Cumulative List contains those plan qualification requirements listed in the 2005 Cumulative List that are applicable to defined

contribution pre-approved plans, the plan qualification requirements listed in the 2006, 2007, 2008, and 2009 Cumulative Lists, as well as additional 2010 plan qualification requirements. These deletions have been made to enhance the utility of the cumulative list, by removing items that would have been previously reviewed in the case of a plan that was submitted during the initial Cycle A submission period (February 1, 2006 – January 31, 2007). However, if a plan has not been previously reviewed for items on earlier cumulative lists, it must still take those items into account. For example, a new plan that was established after the Cycle A submission period would be reviewed for items on the 2004 Cumulative List. Similarly, defined contribution pre-approved plans have not yet been reviewed for items on the 2005 Cumulative List and those items have been retained in this notice in order to facilitate review of those plans.

1. 401(a):

- Final Regulations under § 401(a) of the Code regarding permissible normal retirement ages were published on May 22, 2007 (72 Fed. Reg. 28604). (2006 C. L.).
  - Notice 2007-69, 2007-2 C.B. 468, provides temporary relief for certain pension plans under which the definition of normal retirement age may be required to be changed to comply with the regulations, but only until the first day of the first plan year that begins after June 30, 2008. (2007 C. L.).
  - Notice 2008-98, 2008-2 C.B. 1080, provides that the Service and Treasury intend to amend the normal retirement age regulations to change the effective date for governmental plans to plan years beginning on or after January 1, 2011. (2009 C. L.).
  - Notice 2009-86, 2009-46 I.R.B. 629, provides that the Service and Treasury intend to amend the normal retirement age regulations to change the effective date for governmental plans to plan years beginning on or after January 1, 2013. (New).
- Rev. Rul. 2008-40, 2008-2 C.B. 166, provides that the transfer of amounts from a trust under a plan qualified under § 401(a) to a nonqualified foreign trust is treated as a distribution from the transferor plan and that transfer of assets and liabilities from a qualified plan to a plan that satisfies § 1165 of the Puerto Rico Code is also treated as a distribution from the transferor plan. (2008 C. L.).
- Rev. Rul. 2008-45, 2008-2 C.B. 403, provides that the exclusive benefit rule of § 401(a) is violated if the sponsorship of a qualified retirement plan is transferred from an employer to an unrelated taxpayer and the transfer is not in connection with a transfer of business assets or operations from the employer to the unrelated taxpayer. (2008 C. L.).

2. 401(a)(4):
  - Amendments to § 1.401(a)(4)-9 of the Regulations relating to new comparability plans were published on June 29, 2001 (66 Fed. Reg. 34535). (2005 C. L.).
  - Rev. Rul. 2004-21, 2004-1 C.B. 544. (2005 C. L.).
3. 401(a)(5): Section 401(a)(5)(G) of the Code was amended by PPA '06 § 861(a)(1) with respect to governmental plans. (2008 C. L.).
4. 401(a)(9):
  - PPA § 823 instructs the Secretary of the Treasury to issue regulations under which, for all years to which § 401(a)(9) applies, a § 414(d) governmental plan shall be treated as having complied with § 401(a)(9) if it complies with a reasonable good faith interpretation of § 401(a)(9). (New).
  - Final regulations under § 401(a)(9) were published on September 8, 2009 (74 Fed. Reg. 45993), which permit a governmental plan to comply with the required minimum distribution rules of § 401(a)(9) by using a reasonable and good faith interpretation of the statute. (2009 C. L.).
  - Section 201(a) of WRERA added § 401(a)(9)(H) which provides a suspension of the required minimum distribution rules for 2009 applicable to defined contribution plans. (New).
    - Notice 2009-82, 2009-41 I.R.B. 491, provides guidance relating to the suspension of the required minimum distribution rules for 2009 applicable to defined contribution plans. (New).
5. 401(a)(26): Section 401(a)(26)(G) of the Code was amended by PPA '06 § 861(a)(1) with respect to governmental plans. (2008 C. L.).
6. 401(a)(35): PPA '06 § 901(a)(1) added § 401(a)(35) requiring that defined contribution plans provide employees with the freedom to divest publicly traded employer securities. (2008 C. L.).
  - Notice 2006-107, 2006-2 C.B. 1114. (2008 C. L.).
  - Notice 2008-7, 2008-1 C.B. 276, extends certain transitional guidance and transitional relief provided to certain defined contribution plans holding publicly traded employer securities under Notice 2006-107. (2008 C. L.).
  - WRERA § 109(a) amended the definition of one-participant retirement plan under § 401(a)(35)(E)(iv). (2009 C. L.).
  - Notice 2009-97, 2009-52 I.R.B. 972, extends the deadline to amend for § 401(a)(35) to the last day of the first plan year that begins on or after January 1, 2010. (New).
  - Final regulations under § 401(a)(35) were published on May 19, 2010 (75 Fed. Reg. 27927). (New).

7. 401(a)(36): PPA '06 § 905(b) added § 401(a)(36) regarding distributions to a participant who has attained age 62 and who has not separated from employment at the time of the distribution. (2008 C. L.).
8. 401(a)(37): Section 104(a) of the HEART Act added Code § 401(a)(37) with respect to benefits payable on the death of a plan participant while performing qualified military service. (New).
  - Notice 2010-15, 2010-6 I.R.B. 390, provides guidance regarding HEART Act § 104(a). (New).
9. 401(k) & 401(m)<sup>3</sup>:
  - Announcement 2007-59, 2007-1 C.B. 1448, provides that a plan will not fail to satisfy the requirements of a § 401(k) safe harbor plan because of a mid-year change to implement a designated Roth contribution program. (2007 C. L.).
  - PPA '06 § 826 modified the rules relating to distributions from a § 401(k) plan on account of a participant's hardship to permit the plan to treat a participant's beneficiary under the plan the same as the participant's spouse or dependent. (2008 C. L.).
    - Notice 2007-7, 2007-1 C.B. 395, provides guidance regarding PPA '06 § 826. (2008 C. L.).
    - Announcement 2007-59, 2007-1 C.B. 1448, provides that a plan will not fail to satisfy the requirements of a § 401(k) safe harbor plan because of a mid-year change to implement the PPA '06 § 826 hardship withdrawals. (2008 C. L.).
  - PPA '06 § 827 added § 401(k)(2)(B)(i)(V) which permits reservists called to active duty after September 11, 2001 and before 2008 to take in-service distributions from a § 401(k) plan. (2008 C. L.).
  - Section 107(a) of the HEART Act extends the applicability of the qualified reservist distribution to individuals ordered or called to active duty after December 31, 2007. (2009 C. L.).
    - Notice 2010-15, 2010-6 I.R.B. 390, provides guidance regarding HEART Act § 107. (New).
  - PPA '06 § 861(a)(2) amended § 401(k)(3)(G) with respect to governmental plans. (2008 C. L.).
  - PPA '06 § 902(e)(3) eliminates the gap period income rule for excess contributions in § 401(k)(8)(A)(i). (2008 C. L.).
  - PPA '06 § 902 added § 401(k)(13) with respect to qualified automatic contribution arrangements. (2008 C. L.).
    - Final regulations under § 401(k) with respect to qualified automatic contribution arrangements were published on February 24, 2009 (74 Fed. Reg. 8200). (2009 C. L.).

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<sup>3</sup> Proposed amendments to the regulations under § 401(k) and § 401(m) were published on May 18, 2009 (74 Fed. Reg. 23134) and may be relied upon until final regulations are issued.

- Rev. Rul. 2009-30, 2009-39 I.R.B. 391, provides information with respect to automatic contribution increases under automatic contribution arrangements. (2009 C. L.).
  - Notice 2009-65, 2009-39 I.R.B. 413, provides sample amendments that plan sponsors can use to add automatic contribution features to their plans. (2009 C. L.).
  - PPA '06 § 902(e)(3) eliminates the gap period income rule for excess aggregate contributions in § 401(m)(6)(A). (2008 C. L.).
  - PPA '06 § 902 added § 401(m)(12) with respect to qualified automatic contribution arrangements. (2008 C. L.).
    - Final regulations under § 401(m) with respect to qualified automatic contribution arrangements were published on February 24, 2009 (74 Fed. Reg. 8200). (2009 C. L.).
10. 402(c)(2)(A): PPA '06 § 822(a) amended § 402(c)(2)(A) to permit nontaxable distributions from a qualified plan to be directly rolled over tax-free to either another qualified plan or a § 403(b) plan if the separate accounting requirements are met. (2008 C. L.).
11. 402(c)(11): PPA '06 § 829(a)(1) added § 402(c)(11) to allow nonspouse beneficiaries to directly roll over distributions from a qualified plan to an individual retirement plan. (2008 C. L.).
- Notice 2007-7, 2007-1 C.B. 395, provides guidance regarding § 402(c)(11). (2008 C. L.).
  - WRERA § 108(f) requires that plans provide for nonspouse beneficiary rollovers under § 402(c)(11), effective for plan years beginning after December 31, 2009. (2009 C. L.).
12. 402(f): PPA '06 § 1102(a) provides that notice required to be provided under § 402(f) may be provided as much as 180 days before the annuity starting date.<sup>4</sup> (2008 C. L.).
- Notice 2007-7, 2007-1 C.B. 395, provides guidance regarding PPA '06 § 1102. (2008 C. L.).
  - Notice 2009-68, 2009-39 I.R.B. 423, provides two safe harbor explanations that may be provided to recipients of eligible rollover distributions from an employer to satisfy § 402(f). (2009 C. L.).
  - WRERA § 108(f)(2) amended § 402(f)(2)(A) with respect to the definition of eligible rollover distribution. (2009 C. L.).
13. 402(g)(2): WRERA § 109(b)(3) amended § 402(g)(2)(A)(ii) to eliminate the distribution of gap period earnings with excess deferrals. (2009 C. L.).
14. 402A:

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<sup>4</sup> Proposed regulations under § 402(f) were published on October 9, 2008 (73 Fed. Reg. 59575) and may be relied upon until final regulations are issued.



- Final Regulations under § 401(k) and § 401(m) of the Code relating to designated Roth contributions were published on January 3, 2006 (71 Fed. Reg. 6). (2005 C. L.).
    - Notice 2006-44, 2006-1 C.B. 889, provides a sample amendment for Roth § 401(k) plans. (2006 C. L.).
  - Final Regulations under § 402A of the Code were published on April 30, 2007 (72 Fed. Reg. 21103). (2006 C. L.).
  - SBJA § 2112 added § 402A(c)(4) which permits rollovers from a plan account other than a designated Roth account to the plan's designated Roth account. (New).
    - Notice 2010-84, 2010-51 I.R.B. December 20, 2010, provides guidance regarding § 402A(c)(4). (New).
15. 408A(e): PPA '06 § 824 added § 408A(e) which permits rollovers to Roth IRAs from accounts that are not designated Roth accounts that are part of qualified plans, § 403(b) plans, and § 457 plans. (2008 C. L.).
- Notice 2008-30, 2008-1 C.B. 638, provides guidance regarding § 408A(e). (2008 C. L.).
16. 409:
- Final Regulations were published on December 20, 2006 (71 Fed. Reg. 76134) that provide guidance concerning requirements under § 409(p) for ESOPs holding stock of S corporations. (2006 C. L.).
17. 410(b): Final Regulations were published on July 21, 2006 (71 Fed. Reg. 41357) permitting some employees of tax-exempt organizations to be excluded when determining whether a § 401(k) plan meets the § 410(b) minimum coverage requirements. (2006 C. L.).
18. 411(a):
- Rev. Rul. 2003-65, 2003-1 C.B. 1035. (2005 C. L.).
  - Amendments to § 1.411(d)-3 of the Final Regulations were published on August 9, 2006 (71 Fed. Reg. 45379) with respect to the interaction between the anti-cutback rules of § 411(d)(6) and the nonforfeitability requirements of § 411(a). (2006 C. L.).
  - Section 411(a) of the Code was amended by § 904 of PPA '06 to provide for faster vesting of employer nonelective contributions. (2008 C. L.).
    - Notice 2007-7, 2007-1 C.B. 395, provides guidance regarding § 411(a), as amended by § 904 of PPA '06. (2008 C. L.).
19. 411(a)(11):
- PPA '06 § 1102(a) provides that notice required to be provided under § 411(a)(11) may be provided as much as 180 days before the annuity starting date. Section 1102(b) of PPA '06 requires that the notice under § 411(a)(11) also include a description of the

consequences of failing to defer receipt of a distribution.<sup>5</sup>  
(2008 C. L.).

- Notice 2007-7, 2007-1 C.B. 395, provides guidance regarding PPA '06 § 1102. (2008 C. L.).

20. 411(a)(13): PPA '06 § 701(b)(2) added § 411(a)(13) with respect to special vesting rules for applicable defined benefit plans, such as cash balance plans. (2008 C. L.).
- Notice 2007-6, 2007-1 C.B. 272, provides guidance regarding cash balance plans and other hybrid defined benefit plans. (2008 C. L.).
  - WRERA § 107(b)(2) amended § 411(a)(13)(A). (2009 C. L.).
  - Notice 2009-97, 2009-52 I.R.B. 972, extends the deadline for amending cash balance and other applicable defined benefit plans, within the meaning of § 411(a)(13)(C), to meet the requirements of § 411(a)(13) (other than § 411(a)(13)(A)) to the last day of the first plan year that begins on or after January 1, 2010. (New).
  - Final Regulations under § 411(a)(13) were published on October 19, 2010 (75 Fed. Reg. 64123).<sup>6</sup> (New).
  - Notice 2010-77, 2010-51 I.R.B. December 20, 2010, extends the deadline for amending cash balance and other applicable defined benefit plans, within the meaning of § 411(a)(13)(C), to meet the requirements of § 411(a)(13) (other than § 411(a)(13)(A)) to the last day of the first plan year that begins on or after January 1, 2011. (New).
21. 411(b)(1)<sup>7</sup>:
- Rev. Rul. 2008-7, 2008-7 I.R.B. 419, addresses (1) the application of the backloading provisions of § 411(b)(1)(A), (B), and (C) to defined benefit cash balance plans and (2) the use of a "greater of" formula in the instance of a conversion of a defined benefit pension plan to a cash balance plan, including limited § 7805(b) relief. (2008 C. L.).
22. 411(b)(5): PPA '06 § 701(b)(1) added § 411(b)(5) with respect to applicable defined benefit plans, such as cash balance plans, and special rules relating to age. (2008 C. L.).

<sup>5</sup> Proposed regulations under § 411(a)(11) were published on October 9, 2008 (73 Fed. Reg. 59575). Until final regulations are issued, a plan will be treated as complying with § 411(a)(11) if (1) the plan complies with either the proposed regulations or Q&A-32 and Q&A-33 in Notice 2007-7; or (2) if the plan administrator makes a reasonable attempt to comply with § 411(a)(11).

<sup>6</sup> Proposed regulations under § 411(a)(13) were published on October 19, 2010 (75 Fed. Reg. 64197) and may be relied upon until final regulations are issued.

<sup>7</sup> Proposed regulations under § 411(b)(1) were published on October 19, 2010 (75 Fed. Reg. 64197) with respect to a variable interest crediting rate that can potentially be negative in any given year. Proposed regulations under § 411(b)(1) were published on June 18, 2008 (73 Fed. Reg. 34665) with respect to the application of the accrual rule where plan benefits are determined on the basis of the greater of two or more separate formulas.

- Notice 2007-6, 2007-1 C.B. 272, provides guidance regarding cash balance plans and other hybrid defined benefit plans. (2008 C. L.).
- WRERA § 107(b)(1) amended § 411(b)(5). (2009 C. L.).
- Notice 2009-97, 2009-52 I.R.B. 972, extends the deadline for amending cash balance and other applicable defined benefit plans, within the meaning of § 411(a)(13)(C), to meet the requirements of § 411(b)(5) to the last day of the first plan year that begins on or after January 1, 2010. (New).
- Final Regulations under § 411(b)(5) were published on October 19, 2010 (75 Fed. Reg. 64123).<sup>8</sup> (New).
- Notice 2010-77, 2010-51 I.R.B. December 20, 2010, extends the deadline for amending cash balance and other applicable defined benefit plans, within the meaning of § 411(a)(13)(C), to meet the requirements of § 411(b)(5) to the last day of the first plan year that begins on or after January 1, 2011. (New).

23. 411(d)(3):

- Rev. Rul. 2007-43, 2007-2 C.B. 45, provides guidance regarding the partial termination of a defined contribution plan. (2007 C. L.).

24. 411(d)(6):

- Amendments to § 1.411(d)-3 of the Final Regulations were published on August 9, 2006 (71 Fed. Reg. 45379) with respect to the interaction between the anti-cutback rules of § 411(d)(6) and the nonforfeitability requirements of § 411(a). (2006 C. L.).
- Section 645(b)(3) of EGTRRA directed the Secretary of the Treasury to issue regulations under § 411(d)(6)(B). (2005 C. L.).
  - Section 1.411(d)-3 of the Regulations was published on August 12, 2005 (70 Fed. Reg. 47109). (2005 C. L.).
  - Amendments to § 1.411(d)-3 of the Final Regulations were published on August 9, 2006 (71 Fed. Reg. 45379) with respect to a utilization test. (2006 C. L.).
- Section 411(d)(6)(D) and § 411(d)(6)(E) of the Code were added by § 645 of EGTRRA to permit the elimination of certain optional forms of benefit under certain conditions. (2005 C. L.).
  - Section 1.411(d)-4, Q&A-2(e) of the Regulations was published on January 25, 2005 (70 Fed. Reg. 3475) to implement § 411(d)(6)(E). (2005 C. L.).

25. 412:

- Rev. Rul. 2004-20, 2004-1 C.B. 546, provides guidance with respect to whether a qualified pension plan can be a § 412(i) plan if the plan holds life insurance contracts and annuity contracts for benefits at

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<sup>8</sup> Proposed regulations under § 411(b)(5) were published on October 19, 2010 (75 Fed. Reg. 64197) and may be relied upon until final regulations are issued.

normal retirement age in excess of a participant's benefits at normal retirement age under the plan. (2005 C. L.).

- Notice 2004-59, 2004-2 C.B. 447, provides guidance with respect to restrictions placed on plan amendments following an employer's election of an alternative deficit reduction contribution. (2005 C. L.).
26. 414(d): PPA '06 § 906(a)(1) added language to the definition of governmental plan in § 414(d) with respect to Indian tribal governments. (2008 C. L.).
- Notice 2006-89, 2006-2 C.B. 772, provides transition relief for plans subject to PPA '06 § 906. (2008 C. L.).
  - Notice 2007-67, 2007-2 C.B. 467, extends the transition relief provided in Notice 2006-89. (2008 C. L.).
27. 414(f)(6): PPA '06 § 1106(b) added § 414(f)(6) with respect to a multiemployer status election. Section 6611(a)(2) and (b)(2) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 amends § 414(f)(6). (2008 C. L.).
28. 414(u):
- Section 104(b) of the HEART Act amended § 414(u) of the Code by adding 414(u)(9) regarding how a plan may provide benefit accruals for a person who dies or becomes disabled while performing qualified military service. (New).
    - Notice 2010-15, 2010-6 I.R.B. 390, provides guidance regarding HEART Act § 104(b). (New).
  - Section 105(b)(1) of the HEART Act added § 414(u)(12) with respect to the treatment of differential wage payments during the period a person, while on active duty, is performing service in the uniformed services. (New).
    - Notice 2010-15, 2010-6 I.R.B. 390, provides guidance regarding HEART Act § 105(b)(1). (New).
29. 414(w): PPA '06 § 902(d)(1) added § 414(w) with respect to eligible automatic contribution arrangements. (2008 C. L.).
- WRERA § 109(b)(4), (5), and (6) amended § 414(w)(3), (5), and (6) respectively. (2009 C. L.).
  - Final regulations under § 414(w) with respect to eligible automatic contribution arrangements were published on February 24, 2009 (74 Fed. Reg. 8200). (2009 C. L.).
  - Rev. Rul. 2009-30, 2009-39 I.R.B. 391, provides information with respect to automatic contribution increases under automatic contribution arrangements. (2009 C. L.).

- Notice 2009-65, 2009-39 I.R.B. 413, provides sample amendments that plan sponsors can use to add automatic contribution features to their plans. (2009 C. L.).
30. 414(x): PPA '06 § 903(a) added § 414(x) with respect to special rules for eligible combined plans that consist of a defined benefit plan and a qualified cash or deferred arrangement. (New).
31. 415:
- WRERA § 103(a) changed the deadline to adopt PFEA amendments from the end of the 2008 plan year to the end of the 2009 plan year. (2009 C. L.).
  - Section 415(b)(2)(E)(ii) of the Code was amended by § 303 of PPA '06 regarding the interest rate assumption for applying benefit limitations to lump sum distributions. (2008 C. L.).
  - PPA '06 § 832(a) amended § 415(b)(3) to eliminate the active participant restriction from the “average compensation for high 3 years” definition. (2008 C. L.).
  - PPA '06 § 906(b)(1)(A) & (B) modified §§ 415(b)(2)(H) and 415(b)(10), respectively, regarding Indian tribal governments. (2008 C. L.).
  - PPA '06 § 867(a) amended § 415(b)(11) to remove the 100% of compensation limitation for a church plan participant if the participant has never been a highly compensated employee of the church. (2008 C. L.).
  - Final Regulations under § 415 were published on April 5, 2007 (72 Fed. Reg. 16878). (2006 C. L.).
  - WRERA § 103(b)(2)(B)(i) amended § 415(b)(2)(E)(v) to change the mortality table to the applicable mortality table within the meaning of § 417(e)(3)(B). (2009 C. L.).
32. 416:
- PPA '06 § 902(c)(1) amended § 416(g)(4)(H)(i) by inserting § 401(k)(13) of the Code . (2008 C. L.).
  - PPA '06 § 902(c)(2) amended § 416(g)(4)(H)(ii) by inserting § 401(m)(12) of the Code. (2008 C. L.).
33. 417:
- Final Regulations under § 417(a)(3) were published on March 24, 2006 (71 Fed. Reg. 14798) regarding the disclosure of the relative value of optional forms of benefit. (2006 C. L.).

- PPA '06 § 1102(a) provides that notice required to be provided under § 417 may be provided as much as 180 days before the annuity starting date.<sup>9</sup> (2008 C. L.).
  - Notice 2007-7, 2007-1 C.B. 395, provides guidance regarding PPA '06 § 1102. (2008 C. L.).
- PPA '06 § 302(b) amended the applicable interest rate and mortality table to be used for determining the present value of lump sum distributions in § 417(e)(3). (2008 C. L.).
  - Rev. Rul. 2007-67, 2007-2 C.B. 1047, addresses the mortality tables required by § 417(e)(3). (2008 C. L.).
  - Notice 2008-30, 2008-1 C.B. 638, provides guidance regarding PPA '06 § 302. (2008 C. L.).
  - WRERA § 103(b)(2)(A) amended § 417(e)(3)(D)(i) by striking “clause (ii)” and inserting “subparagraph (C)”. (2009 C. L.).
- PPA '06 § 1004(a) added the qualified optional survivor annuity benefit to § 417. (2008 C. L.).
  - Notice 2008-30, 2008-1 C.B. 638, provides guidance regarding PPA '06 § 1004. (2008 C. L.).

34. 420:

- Section 6613 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, amends § 420(c)(3)(A) regarding minimum cost requirements for transfers of excess pension assets to retiree health accounts. (2007 C. L.).
- PPA '06 § 114(d)(1) modified the definition of the term “excess pension assets” in § 420(e)(2). Section 6612(b) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, amends § 420(e)(2)(B). (2007 C. L.).

35. 432: PPA '06 § 212(a) added § 432 which requires that a funding improvement plan or a rehabilitation plan be adopted for multiemployer plans in endangered or critical status and provides for certain benefit reductions.<sup>10</sup> (2008 C. L.).

- WRERA § 204 provides a temporary delay of designation of multiemployer plans in endangered or critical status. (2009 C. L.).
  - Notice 2009-31, 2009-16 I.R.B. 856, as modified by Notice 2009-42, 2009-20 I.R.B. 1011, provides election and notice procedures for multiemployer plans under WRERA § 204. (2009 C. L.).

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<sup>9</sup> Proposed regulations under § 417 were published on October 9, 2008 (73 Fed. Reg. 59575) and may be relied upon until final regulations are issued.

<sup>10</sup> Proposed regulations under § 432 were published on March 18, 2008 (73 Fed. Reg. 14417) and may be relied upon until final regulations are issued.

- Rev. Proc. 2009-43, 2009-40 I.R.B. 460, provides procedures with respect to the revocation of elections by multiemployer plans to freeze funded status under WREIRA § 204. (2009 C. L.).
- WREIRA § 205 provides a temporary extension of the funding improvement or rehabilitation periods for multiemployer plans in endangered or critical status for 2008 or 2009. (2009 C. L.).
- Notice 2009-31, 2009-16 I.R.B. 856, as modified by Notice 2009-42, 2009-20 I.R.B. 1011, provides election and notice procedures for multiemployer plans under WREIRA § 205. (2009 C. L.).

36. Miscellaneous:

- Rev. Rul. 2005-55, 2005-2 C.B. 284, provides guidance with respect to medical reimbursement accounts under a profit sharing plan. (2005 C. L.).
- Section 1.401(a)-21 of the Regulations was published on October 20, 2006 (71 Fed. Reg. 61877) setting forth standards for the use of an electronic medium to provide applicable notices to recipients or to make participant elections. (2006 C. L.).
- Notice 2008-21, 2008-1 C.B. 431, provides transitional guidance for 2008 under § 436 for small plans with end-of-year valuation dates. (2008 C. L.).
- Notice 2008-73, 2008-2 C.B. 717, expands transition relief of Notice 2008-21. (2008 C. L.).
- Rev. Rul. 2009-31, 2009-39 I.R.B. 395, provides guidance with respect to annual paid time off contributions. (2009 C. L.).
- Rev. Rul. 2009-32, 2009-39 I.R.B. 398, provides guidance with respect to paid time off contributions at termination of employment. (2009 C. L.).

The following guidance contains sample or model amendments: Notice 2005-5 (automatic rollover); Notice 2006-44, 2006-1 C.B. 889 (Roth § 401(k) plans); Notice 2009-65, 2009-39 I.R.B. 413 (automatic contribution features); and Notice 2009-82, 2009-41 I.R.B. 491 (suspension of the minimum distribution requirement for 2009).

## DRAFTING INFORMATION

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